

RINI & CORAN, P.C.

Attorneys at Law

Dupont Circle Building
1350 Connecticut Avenue, N.W.
Suite 900

Washington, D.C. 20036

(202) 296-2007

Fax (202) 429-0551

ORIGINAL

ROBERT J. RINI
STEPHEN E. CORAN*
STEVEN A. LANCELLOTTA
VIVIAN E. KELLER*

*NOT ADMITTED IN D.C.

RECEIVED

AUG 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 19, 1993

VIA HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

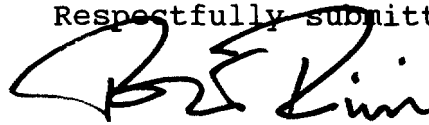
Re: Reply Comments in MM Docket No. 93-106

Dear Mr. Caton:

Transmitted herewith, on behalf of the Coalition of Concerned Wireless Cable Operators, are the original and five (5) copies of its Reply Comments in the above-referenced docket.

Please contact the undersigned counsel should there be any questions or need for additional information.

Respectfully submitted,



Robert J. Rini

rjr/Caton.2/phm

No. of Copies rec'd
List A B C D E

075

RECEIVED

AUG 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 74 of the) MM Docket No. 93-106
Commission's Rules Governing Use)
of the Frequencies in the)
Instructional Television Fixed)
Service)

To: The Commission

REPLY COMMENTS

The Coalition of Concerned Wireless Cable Operators (the "Coalition"),¹ by counsel and pursuant to Section 1.415 of the Commission's Rules and Notice of Proposed Rule Making, FCC 93-183, released April 26, 1993 ("Notice"), hereby submits these Reply Comments.

Following the filing of initial Comments in this proceeding, it became clear that the major divisive issue among the Commenters was the perception that channel loading might undermine the primary purpose of ITFS and possibly constitute a de facto reallocation of

¹ The Coalition consists of wireless cable operators that currently operate or are developing wireless cable systems, as follows: ACS Enterprises, Inc. (Philadelphia, PA), Broadcast Services International, Inc. (Ely, Minnesota), Countryside TV Management Services, Inc. (Caney, Kansas), Family Entertainment Network, Inc. (Fargo, North Dakota; Windom, Minnesota; and Yankton, South Dakota), People's Cable, Inc. (Lakeland, Florida), Rapid Choice TV, Inc. (Rapid City, South Dakota), Salisbury E MPSG Partnership (Salisbury, Maryland), and Skyline Entertainment Network (Spokane) L.P. (Spokane, Washington).

ITFS spectrum. Several key industry groups² came together and forged a common solution that would authorize the use of channel loading under certain conditions. This common approach is attached as Attachment A hereto (the "Compromise") and is enthusiastically supported by the Coalition.

The Compromise ensures that the voluntary use of channel loading would not undermine the primary purpose of ITFS. The Compromise preserves for the educators the right, not to be abridged by contract, to immediate use or ready recapture of at least forty hours per week per licensed ITFS channel. Moreover, in a significant departure from current Commission policies that permit restrictions to be imposed on simultaneous use of channels, the educator would have the right to recapture simultaneous use of all licensed channels. Currently, Commission policies allow educators to bargain away these rights. Thus, under the Compromise educators would continue to be able to meet their needs as they deem necessary and there would be no diminution in the amount and type of ITFS programming required to be transmitted.

The proposed channel loading rules would increase the flexibility of educators to program their airtime to meet their

² The National ITFS Association; Wireless Cable Association, International; American Council on Education; American Association of Community Colleges; Alliance for Higher Education; Arizona Board of Regents for Benefit of the University of Arizona; Board of Regents of the University of Wisconsin System; Iowa Public Broadcasting Board; Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico; South Carolina Educational Television Commission; State of Wisconsin - Educational Communications Board; University of Maine System; Cross Country and the Box Springs Educators; and the Coalition.

needs. Although the minimum programming requirement (i.e., 1-20 hours) would be retained, an educator would have the discretion to load programming satisfying this requirement on fewer than all of its licensed channels. The decision to load or not to load would remain in the hands of the educator.

Moreover, the Compromise also allows the educators to agree that any recapture airtime (i.e., 21-40 hours) be placed on other MDS or ITFS channels in the wireless cable system. This would facilitate the creation of full-time educational channels and commercial channels, without the use of costly channel mapping technology. Use of full-time educational channels furthers the educators' desire to avoid confusion as to which channel(s) they are programming. Use of full-time commercial channels furthers the wireless cable operator's need to satisfy the requirements of programmers, many of which insist on being placed on full-time channels as a condition of carriage.

The Compromise is a classic "win-win". Educators gain increased flexibility in scheduling their programming; wireless cable operators gain access to full-time channels without the need to utilize costly channel mapping technology. Not only does this solution further competition to cable, but it creates additional incentives for wireless cable operators to enter into excess capacity leases with educators, furthering the use of ITFS spectrum to meet educational needs.

In order to assuage the concerns of certain of the educators, the Coalition urges the Commission to clarify that no demerits at

the initial application stage will be imposed on educators proposing to utilize channel loading or system-wide scheduling. The current comparative selection process already awards preferences to applicants proposing more than the minimum amount of educational programming. Nothing further is necessary.

With respect to license renewals, the Commission must make clear that an educator meeting its minimum programming obligations would be entitled to an expectancy of renewal. This is necessary to nip in the bud the prospect that greenmailers or speculators might sponsor competing ITFS applicants proposing "pie-in-the-sky" and prevail under the comparative criteria the Commission uses to select among competing applicants. This danger exists not only for educators leasing excess capacity but also for those that do not.

Channel loading should not be viewed as a de facto reallocation or even a step in that direction. Once compression technology is more widely deployed, as is anticipated over the next several years, the need for commercial use of ITFS channels likely will be lessened. Thus, there is no substance to the emotional concerns expressed by some that channel loading will lead to a further reallocation of spectrum.

The Commission's proposed channel loading rules as now reflected in the Compromise are fully consistent with preserving the primary purpose of ITFS and furthers the public interest. The Coalition supports the expedited adoption of new Rules for the benefit of wireless cable operators, educators and the public.

Respectfully submitted,

**THE COALITION OF CONCERNED
WIRELESS CABLE OPERATORS**

By:


Robert J. Rini

Rini & Coran, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

Dated: August 19, 1993

wirel Cm

ATTACHMENT A

COMPROMISE ON CHANNEL LOADING

Pending the technical and economic viability of digital compression technology, the Commission will permit channel loading and system-wide scheduling on the following basis:

1. Each ITFS licensee will be required to preserve for immediate use or ready recapture at least forty hours per week per licensed channel for the transmission of ITFS programming (including the right to recapture simultaneous use of airtime on the number of the channels for which it is licensed). These rights cannot be abridged by contract and any contracts that do so are superseded. There will be no reduction whatsoever in the amount of mandatory ITFS programming from the current rules.
2. Each ITFS licensee will be required to actually transmit at least twenty hours (twelve hours for the first two years of operation) of ITFS programming each week for each channel licensed to it. Each ITFS licensee will be permitted to load programming satisfying this requirement on less than all of the channels for which it is licensed. The minimum programming requirement (*i.e.* hours 1-20) must be met by transmissions on the channel(s) licensed to the ITFS licensee.
3. In order to promote realization of the benefits of system-wide planning of program schedules, ITFS licensees that choose to do so may agree to the transmission over any MDS or ITFS channel in the system programming satisfying the minimum recapture requirements (*i.e.* hours 21-40). By carefully coordinating their programming schedules as part of a system, the ITFS licensees in an area could create full time educational channels and provide their wireless cable partner with the maximum number of full time commercial programming channels (thus obviating the need for channel mapping technology), while still preserving the ability of the ITFS licensees to transmit multiple programs simultaneously.
4. Leasing and scheduling by ITFS applicants/licensees consistent with the above will establish that the applicant/licensee needs its channel capacity and entitle the applicant/licensee to an initial or renewed license. No demerit for channel loading or system-wide scheduling will be imposed under the Commission's system for selecting from among mutually-exclusive applicants, nor will channel loading or system-wide scheduling have adverse consequences for a renewal application.
5. Similarly, leasing and scheduling by ITFS applicants/licensees consistent with the above will not serve as a basis for future efforts to seek reallocation of non-loaded ITFS spectrum for commercial use, and the parties to the compromise agree not to seek any such reallocation.

CERTIFICATE OF SERVICE

I, Patricia Moser, an administrator with the law firm of Rini & Coran, P.C. do hereby certify that on this 19th day of August 1993, I have caused to be served a copy of the foregoing Reply Comments of the Coalition of Concerned Wireless Cable Operators by hand delivery (indicated with *) or by U.S. first-class mail, postage pre-paid, on the following:

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan*
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Brian F. Fontes, Chief of Staff*
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

Clay Pendarvis, Esq.*
Chief, Television Bureau
Video Services Division
Federal Communications Commission
1919 M Street, N.W.
Room 700
Washington, D.C. 20554

Gregory M. Schmidt, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

Dr. Robert Threlkeld
Associate Director
Instructional Technology Center
3801 West Temple Avenue
Pomona, CA 91768

Willi Bokenkamp
Senior Communications Analyst
Information Systems and
Administrative Services
300 Lakeside Drive, Eighth Floor
Oakland, CA 94612-3550

Clare Colella
Director
Department of Electronic Communications
Catholic Television Network
1450 North D Street
San Bernardino, CA 92405

Lew Warren
Station Manager - KVCR-TV
701 South Mt. Vernon Avenue
San Bernardino, CA 92410

Todd D. Gray, Esq.
Dow, Lohnes & Albertson
1255 Twenty-Third St., N.W.
Suite 500
Washington, D.C. 20037

Brian Coyne
President and General Manager
Catholic Television Network
1450 North D Street
San Bernardino, CA 92405

Paul J. Sinderbrand, Esq.
Sinderbrand & Alexander
888 16th Street, NW
Washington, D.C. 20006

Jim Cheski
Assistant Vice President
Information Technology
University of Louisville
Louisville, Kentucky 40292

George Petrutsas, Esq.
Fletcher, Heald & Hildreth
P.O. Box 33847
Washington, D.C. 20033-0847

Stephen G. Kraskin, Esq.
Kraskin & Associates
2120 L Street, N.W.
Suite 810
Washington, D.C. 20037

Wayne Coy, Jr., Esq.
Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1573

John Lindsay
Operational Committee Chairperson
KETC
5801 Sundale Avenue
Bakersfield, CA 93309

William D. Wallace, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595



Patricia Moser